80-859

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

NO. 80 -

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION, LOCAL NO. 6, et al.,

Petitioners,

v.

GERALD ROBERT COLLIER,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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QUESTIONS PRESENTED

1. May a state impose tort damage liability upon a Local Union, for all assaults committed during a strike, merely because the Local engaged in conduct clearly protected by the Constitution, the national labor laws and the decisions of this Court, such as mounting a bargaining strike, distributing strike literature, and raising legal funds, and because some prior occasional violent acts had occurred during the strike?

2. May evidence that a Local Union distributed "scab posters" be admitted in a state tort trial, as allegedly showing conspiratorial motive or participation of the Local in an assault committed by unknown persons alleged to be Local members, compatibly with the First Amendment, the national labor laws and the de-

cisions of this Court?

3. May a Local Union be held liable on conspiracy, agency or ratification theories for an assault committed by unknown persons alleged to be Local members, because the Local had not disciplined individual members who committed other unrelated acts of violence, compatibly with the Constitution, the national labor laws and the decisions of this Court?

PARTIES TO THE PROCEEDING

1. Gerald Robert Collier, the Plaintiff below, is Respondent herein. The other parties were Defendants below.

2. Petitioners Local 6 of the International Printing and Graphic Communications Union, and Raphael F. Collins, James A. Dugan, Jimmy Ingram and Charles S. Davis, who are officers of the Local.

3. International Printing and Graphic Communications Union, and Sol Fishko, Leo L. Vohsen, Raymond J. Boland, James H. Sampson, Don McCaughan, Wade H. Moore, William C. Torrence, Burton F. Riley, Clarence G. Schroeder, Ron Tozzi, and Michael P. McNally, who are officers and directors of the International Union.

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v.

GERALD ROBERT COLLIER,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

International Printing and Graphic Communications Union, Local No. 6, and its officers, Raphael F. Collins, James A. Dugan, Jimmy Ingram and Charles S. Davis, petition for a writ of certiorari to

review the judgment of the Supreme Court of Virginia in this case.

A Petition for a Writ of Certiorari, No. 80- , has previously been filed by the International Printing and Graphic Communications Union and its officers and directors, who were held liable jointly with petitioners herein in the judgment of the trial court below. Because the federal questions presented by both sets of petitioners are essentially identical, petitioners herein adopt in its entirety, and refer wherever possible to, the Petition of the International Union.

OPINIONS AND JUDGMENTS BELOW

There were no opinions rendered below. The Order of the Supreme Court of Virginia denying Local 6's petition for appeal was entered on May 30, 1980, and appears at

page 1a of the Appendix hereto. The Order of that Court denying Local 6's petition for rehearing was entered on August 28, 1980 and appears at page 2a of the Appendix. The Order of Final Judgment of the Circuit Court for Arlington County, Virginia, was entered on July 27, 1979, and appears at page 3a of the Appendix.

JURISDICTION

The Order of the Supreme Court of Virginia denying review was entered on May 30, 1980 (App. 1a). A timely petition for rehearing was denied on August 28, 1980 (App. 2a). The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Supremacy Clause and the First, Fifth and Fourteenth Amendments of the

United States Constitution, and Sections 7 and 8 (c) of the National Labor Relations Act, as amended, 29 U.S.C. §§ 157 and 158(c), are set out in the Appendix to the Petition of the International Union.

STATEMENT OF THE CASE

This Petition arises out of a $200,000.00 judgment for assault and battery, which an Arlington County, Virginia, jury awarded to Respondent Gerald Collier ("Collier") against Petitioners International Printing and Graphic Communications Union, Local No. 6 ("Local 6"), and its officers, and against the International Printing and Graphic Communications Union ("the International"), and its officers and directors.[1/] As stated,

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1. The judgment ran against officers and directors in their official capacity, and not individually.

supra p. 2, the International has previously filed a Petition for a Writ of Certiorari and Petitioners herein have adopted it; the International's statement of the case, pp. 2 - 9, essentially describes the facts material to the consideration of the questions presented. Nevertheless, in order to specifically demonstrate that the errors complained of deprived Local 6 as well as the International of federal rights, Petitioners herein add certain matters to the International's statement.

As the International has described, Collier alleged that on March 12, 1976, he was beaten by unidentified hooded persons whom he attempted to identify as Local 6 members. The attempted identification was based on hearsay and circumstantial evidence admitted over objection (T. 569-603, 611, 614, 616). Collier sought to prove that the never-

identified assailants were agents or co-conspirators of Local 6 and the International in a scheme of intimidation of strikebreakers during a strike at the Washington Post which lasted from October 1, 1975 to May, 1977.

However, Collier presented no direct evidence that the Local or its officers authorized the assault or approved of it or even knew of it until the incident was reported in a newspaper. Instead, over repeated objections, he presented voluminous evidence that Local 6 was conducting a strike at the time and engaged in legal strike activities such as bargaining, picketing, distributing literature and "scab posters," and raising legal defense funds for and otherwise assisting Local 6 members charged with offenses arising from the first day of the strike, October 1, 1975. He presented

no evidence that any "scab posters," a cornerstone of his case, were directed at him, that anyone who had been featured on a "scab poster" had been assaulted, or that legal defense funds had gone to his unidentified assailants.

Collier also presented evidence that individual Local 6 members and other unidentified persons had used abusive language and engaged in violent acts on isolated occasions during the 575-day course of the labor dispute,[2/] and that Local 6 had taken no disciplinary actions against such members. Local 6 officers Dugan and Collins, on the other hand, testified without contradiction that they had opposed violence, had counseled against it at Local 6 meetings, had instructed picket captains to maintain orderly picket lines,

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2. See Petition of International, p. 7, n. 5

and had removed excitable persons from picket lines (T. 1204, 1206, 1226, 1227).[3/]

The jury found Local 6, the International, and the officers and directors of both, in their official capacity and not individually, liable for compensatory damages of $200,000.00. The trial judge denied motions by both unions for judgment notwithstanding the verdict. Subsequently, the Virginia Supreme Court denied both unions' petitions for appeal and petitions for rehearing.

FEDERAL QUESTIONS RAISED

Petitioners seek review of issues involving the First, Fifth and Fourteenth Amendments and the Supremacy Clause of the Constitution of the United States, and the federal labor laws, all of which protect conduct that the judgment below punishes

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3. There was testimony at trial that Local 6 officers were present at one rally where abusive language was used and a window was broken, some two months before the alleged assault.

and inhibits despite timely and proper objections.

Petitioners conducted their trial defense jointly with the International, and the motions and objections cited in the International's Petition were in most cases aimed at evidence which Collier introduced against all defendants without differentiation. Petitioners joined in the International's motion in limine to exclude, on First Amendment and federal preemption grounds, evidence relating to, inter alia, "scab posters" distributed by Local 6; as the International has described, the trial court rejected this motion with the statement that "...I don't think the federal cases have any applicability" (T. 34).

Throughout the trial, Petitioners routinely joined in the evidentiary objections of the International, and vice

versa, including those based on Constitutional rights and federal preemption. See T. 1581(acknowledgement of joint conduct of trial). Specific instances of such objections include T. 929, where the trial court overruled a jointly made preemption objection with the words (T. 930):

> "But it seems to me that the payment of the strike benefits with knowledge of unlawful violence could be deemed ratification even though it is normal union practice."

Petitioners likewise joined in the International's unsuccessful motion to strike the evidence on the grounds, inter alia, that a broad count of conspiracy to intimidate strikebreakers was preempted (T. 1585).

After the verdict was returned, Petitioners moved in writing for a judgment notwithstanding the verdict, on the ground, inter alia, "that the Court permitted the Plaintiff to insinuate that federally protected conduct was unlawful

and improper notwithstanding the fact that said conduct was protected by the laws and Constitution of the United States." Denying the motion, the Court responded, "Well, the Court gave the jury the opportunity to take all the circumstantial evidence into account to see if from it they could infer agency, conspiracy and/or ratification. They did so" (T. 1812).

Petitioners raised the same federal questions in their Petition for Appeal to the Supreme Court of Virginia. There they argued (p. 24),

> "Some of the evidence offered to illustrate this grand conspiracy theory included verbal harrassment, posters, and the parties' bargaining positions. This type of evidence, however, concerns activities which are protected by Federal labor laws and are inadmissible in a state court on a state law cause of action for conspiracy. United Mine Workers v. Gibbs, 383 U.S. 715 (1966)."

Later in the same Petition, again citing

Gibbs, petitioners contended (p. 29) that:

> "defense of accused strike participants is a normal union function and is therefore inadmissible to infer ratification"

and (p. 30) that:

> "[Collier] failed to meet the higher standard of proof called for by the U.S. Supreme Court where it is sought to hold a labor union liable for the acts of individuals, i.e., the standard of 'clear, unequivocal, and convincing proof'."

In their Petition for Rehearing, Petitioners expressly adopted the arguments of the International on the question of admissibility and adequacy of evidence of federally-protected union activities.

The Supreme Court of Virginia denied the original Petition with the sentence "Finding no reversible error...the court refuses the petition" and likewise denied the Petition for Rehearing without opinion (App. 1a and 2a).

REASON FOR GRANTING THE WRIT

THE STATE OF VIRGINIA, BY THE JUDGMENT BELOW, HAS PUNISHED PETITIONERS FOR, AND THUS REGULATED AND INHIBITED, THE EXERCISE OF RIGHTS PROTECTED BY THE CONSTITUTION, THE NATIONAL LABOR LAWS AND THE DECISIONS OF THIS COURT.

Like the International,[4/] Local 6 has had tort liability imposed on it for no express actions other than its lawful ones taken in pursuit of lawful goals during a lawful strike. Like the International, Local 6 and other local unions will be deterred by this judgment and the rules of law it embodies from exercising their federally guaranteed rights to express their views freely and to strike

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4. As noted, supra p. 2, Petitioners have adopted the International's Petition in its entirety and supplement it to emphasize Local 6's independent interest in having a writ issue.

when necessary to achieve legitimate objectives, if the judgment is left standing. Indeed, such a judgment could virtually destroy a local union economically.

Local 6 was directly involved in the labor dispute which became the focus of the trial. While the International expressed its views in its newspapers about the bargaining position of the Local, the Local took the bargaining position and struck in support of it. The strike was lawful in origin, and no unfair labor practice charges arose during its duration. Yet, Collier was permitted to put the whole strike on trial in the process of presenting his theory that his never-identified assailants were agents or co-conspirators of Local 6. Because Local 6 had important objectives in the strike, Collier encouraged the jury to infer that Local 6 would stop at nothing to achieve them. The issues out of which the strike

arose; the literature distributed during its course; the funds raised to defend Local 6 members from legal charges: these were all essential elements in the picture Collier was allowed to paint. Yet none of these activities were related to the assault charged. For example, no "scab poster" of Collier was ever printed, nor in fact were any men ever assaulted after being named in such a poster.

As the Petition of the International sets forth, Virginia has transgressed the bounds of federal preemption in basing tort liability on protected union activities unrelated to the assault charged. It is clear from the record that the trial judge took no cognizance of, and in fact disavowed, his duty to ensure that the jury tried only the legitimate state issues and not "the merits of the underlying labor controversy." See Farmer v. Carpenters, 430 U.S. 290

(1977). Instead, the judge allowed the jury to use, as evidence of conspiracy, actions protected by the Constitution and Sections 7 and 8(c) of the National Labor Relations Act, 29 U.S.C. §§157 and 158(c). Moreover, the judge permitted the jury to find liability if the assault arose from an "impulse or emotion" in any way related to strike issues (T. 1609).

Aside from Local 6's actions in conducting the strike, the principal evidence relied on by Collier, under his amalgam theory of agency, ratification, and/or conspiracy, was Local 6's failure to discipline Local 6 members involved in prior unrelated acts of violence. Yet inaction of this sort cannot create an agency relationship compatibly with the reasoning of Carbon Fuel Co. v. United Mine Workers of America, 444 U.S. 212 (1979). As this Court has previously

held, "the relevant question is whether union officials were clearly shown to have endorsed violence or threats of violence as a means of settling the dispute." United Mine Workers v. Gibbs, 383 U.S. 715, 741 (1966).[5/]

That the strike conducted by Local 6 was accompanied by scattered incidents of violence, some involving Local 6 members, is not in dispute. But the only direct evidence of Local 6's position adduced at trial was that, far from endorsing violence, Local 6's president and treasurer had spoken out against violence and removed excitable persons from picket lines.

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5. Although the defendant in Gibbs was an international union, the Court indicated that the "clear proof" standard also would be required in order to establish a local union's responsibility for strike violence. 383 U.S. at 737, n. 28.

If a local union, despite publicly denouncing strike violence, can nevertheless be made vicariously liable for the acts of unidentified persons, on the ground that individuals who were members of the local union had resorted to violence on other occasions, then that union and its members are indeed limited in their freedom to exercise federally protected rights.

CONCLUSION

For the reasons stated above, the Petition should be granted.

Respectfully submitted,

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APPENDIX

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 30th day of May, 1980.

Record No. 791600

Circuit Court No. L-19975

INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION, LOCAL NO 6, et al., Appellants,

against

GERALD ROBERT COLLIER, Appellee.

From the Circuit Court of Arlington County

Finding no reversible error in the judgment complained of, the court refuses the petition for appeal filed in the above-styled case.

A Copy,
Teste:
Allen L. Lucy,
Clerk

By:
/s/Richard R. Buriak
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 28th day of August, 1980.

Record No. 791600

Circuit Court No. L-19975

INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION, LOCAL NO. 6, et al.,
Appellants,

against

GERALD ROBERT COLLIER, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 30th day of May, 1980, and grant a rehearing thereof, the prayer of said petition is denied.

A Copy,
Teste:
Allen L. Lucy,
Clerk

By:
/s/David B. Such
Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
COUNTY OF ARLINGTON

AT LAW NO. 19975

GERALD ROBERT COLLIER, Plaintiff,

v.

INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION, et al., Defendants.

FINAL JUDGMENT

THIS CAUSE CAME TO BE HEARD upon the pleadings, the trial before the Court and a jury on June 12, 13, 14, 15, 18, 19, 20, 21, 22, and 25, 1979, the record of which is incorporated herein by reference, and upon the verdict of the jury in favor of the plaintiff against the defendants International Printing and Graphic Communications Union and its officers and directors, and the International Printing and Graphic Communications Union, Local No. 6, and its officers and directors, in the amount of $200,000.00, and upon the motion of the International Printing and Graphic Communications Union, Local No. 6, for entry of judgment non obstanto verdicto, and upon argument thereon, which is also incorporated herein by reference, and upon consideration thereof,

IT APPEARING TO THE COURT that the verdict of the jury is proper and consistent with the law and evidence presented herein, and that the motions of the defendants are without merit, it is therefore,

ORDERED AND ADJUDGED that the motion of the International Printing and Graphic Communications Union to set aside the verdict be, and hereby is, denied and overruled; and it is further

ORDERED AND ADJUDGED that the motion of the International Printing and Graphic Communications Union, Local No. 6, for a judgment non obstanto verdicto be, and hereby is, denied and overruled; and it is further

ORDERED AND ADJUDGED that judgment be, and hereby is, entered in favor of plaintiff, Gerald Robert Collier, against the defendants herein, to-wit: the International Printing and Graphic Communications Union, Sol Fishko, Leo L. Vohsen, Raymond J. Boland, James H. Sampson, Don McCaughan, Wade H. Moore, William C. Torrence, Burton F. Riley, Clarence G. Schroeder, Ron Tozzi, Michael P. McNally, in their capacity as officers and directors of the International Printing and Graphic Communications Union, and not individually, the International Printing and Graphic Communications Union, Local No. 6, Raphael F. Collins, James A. Dugan, Jimmy Ingram, and Charles S. Davis, in their capacity as officers and directors of the Internatonal Printing and Graphic Communications Union, Local No. 6, and not individually, in the amount of Two Hundred Thousand Dollars and no/100 ($200,000.00), plus taxable costs and interest at eight (8%) percent from July 27, 1979.

Upon motion of Defendants, it is ORDERED that execution of judgment be, and hereby is, suspended provided an appeal bond, as prescribed by Virginia Code Section 8.01-676, is filed in the Clerk's Office of this Court in the amount of $210,000.00, with surety, such bond to be filed within 30 days from July 27, 1979.

AND IT IS FURTHER ORDERED that the transcript of the trial proceedings be made part of the record of this case.

AND IT IS FURTHER ORDERED that the clerk of this Court be and hereby is directed to issue certified copies of this Final Judgment forthwith, to all counsel of record.

AND THIS CAUSE IS FINAL.

ENTERED this the 27th day of July, 1979.

/s/Charles S. Russel
CHARLES S. RUSSEL
JUDGE

see 80

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